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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE

COMPANY,

Plaintiff,

vs.

No. C-1-02-479

CHRISTOPHER L. KEARNEY,

Defendant.

VIDEOTAPED DEPOSITION OF DAVID  
NEWKIRK, a Witness, taken on behalf of the  
Defendant before Mary Lynn Cushing, CSR, CCR No.  
1077 pursuant to Notice on the 13th day of June,  
2007, at the Law Offices of Stinson, Morrison,  
Hecker, LLP, 1201 Walnut Street, Suite 2900,  
Kansas City, Missouri, 64106.

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1 APPEARANCES  
 2  
 3 Appear for Jefferson-Pilot  
 4 Insurance Company and Disability Management  
 5 Services was Mr. John E. Meagher of Shutts &  
 6 Bowen, LLP., 1500 Miami Center, 210 South  
 7 Biscayne Boulevard, Miami, Florida, 33131.  
 8 Appear telephonically for  
 9 Jefferson-Pilot Insurance Company was Ms.  
 10 Stephanie T. Farabow, 826 North Elm Street,  
 11 Greensboro, North Carolina, 27401.  
 12 Appear telephonically for  
 13 Disability Management Services was Mr. Adam  
 14 Formus, Legal Counsel, of Disability Management  
 15 Services, 1391 Main Street, Springfield,  
 16 Massachusetts, 01103.  
 17 Appear for Mr. David Newkirk was  
 18 Mr. Bruce E. Baty of Stinson, Morrison, Hecker,  
 19 LLP, 1201 Walnut Street, Suite 2900, Kansas  
 20 City, Missouri, 64106.  
 21 Appear for the Defendant was Mr.  
 22 Michael A. Roberts of Graydon, Head & Ritchey,  
 23 LLP, 1900 Fifth Third Center, 511 Walnut Street,  
 24 Cincinnati, Ohio, 45202.  
 25

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1 (Deposition commenced at 3:30 PM)  
 2  
 3 MR. MARTIN: This is the  
 4 videotaped deposition of David Newkirk, case No.  
 5 C-1-02-479. Today's date is June 13th of 2007.  
 6 Time is now 3:34. We're going on the record.  
 7 Counsel, would you please state your  
 8 appearances?  
 9 MR. MEAGHER: John Meagher for  
 10 Jefferson-Pilot and Disability Management  
 11 Services. Also present is Adam Formus of  
 12 Disability Management Services.  
 13 MR. BATY: Bruce Baty with  
 14 Stinson, Morrison, Hecker representing the  
 15 witness Mr. Newkirk.  
 16 MR. ROBERTS: And Mike Roberts, I  
 17 represent the defendant Chris Kearney.  
 18 MR. MARTIN: And on the phone?  
 19 MR. MEAGHER: Adam Formus I said.  
 20 MR. FORMUS: Yes.  
 21 MR. MARTIN: Would you please  
 22 swear in the witness.  
 23 DAVID NEWKIRK,  
 24 being first duly sworn, testified under oath as  
 25 follows:

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1 Also present was Jeremy Martin,  
 2 Videographer, of Metropolitan Court Reporters,  
 3 Inc., 9200 Indian Creek Parkway, Suite 205,  
 4 Overland Park, Kansas, 66210.

## INDEX

5  
 6  
 7 WITNESS: PAGE:  
 8 WILLIAM DEMPSEY  
 9 Examination by Mr. Roberts 4

10  
 11  
 12 (No Exhibits were marked.)

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13  
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MR. MEAGHER: Again. As with the  
 earlier deposition of Mr. Dempsey, we object  
 that notice of a videotape was not properly  
 given, so we object on that basis.  
 MR. ROBERTS: I don't think I  
 sent a notice of this deposition.  
 MR. MEAGHER: Well, then that's  
 the problem.  
 MR. ROBERTS: Can we proceed?  
 MR. MEAGHER: Yes.  
 MR. ROBERTS: Thank you.  
 EXAMINATION  
 BY MR. ROBERTS:  
 Q. Sir, can you state your name for the  
 record, please?  
 A. **David Newkirk.**  
 Q. And where do you reside Mr. Newkirk?  
 A. **I reside in the Shawnee, Kansas area.**  
 Q. And how old are you, sir?  
 A. **I am 48.**  
 Q. Are you a lawyer?  
 A. **Yes, I am.**  
 Q. What year did you achieve your law  
 degree?  
 A. **1987.**

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<p>1 Q. How are you presently employed?</p> <p>2 A. <b>I am employed with Employers</b></p> <p>3 <b>Reinsurance Corporation.</b></p> <p>4 Q. Is that the GE subsidiary?</p> <p>5 A. <b>No, it is not a GE subsidiary.</b></p> <p>6 Q. That's a subsidiary of Swiss Re?</p> <p>7 A. <b>Yes, it is.</b></p> <p>8 Q. How long have you been employed by an entity that's a subsidiary of Swiss Re?</p> <p>9 A. <b>Approximately a year give or take.</b></p> <p>10 Q. Prior to that?</p> <p>11 A. <b>With the same company owned by General Electric.</b></p> <p>12 Q. How long had you been employed by that company when it was owned by General Electric?</p> <p>13 Let me state it another way. When did you begin your employment at Employers Reinsurance Corporation?</p> <p>14 A. <b>1990.</b></p> <p>15 Q. Let's refer to that as ERC, okay? You need to answer audibly.</p> <p>16 A. <b>I'm sorry?</b></p> <p>17 Q. You need to answer out loud?</p> <p>18 A. <b>Certainly.</b></p> <p>19 Q. And there's another entity called ERAC</p>	<p>1 Q. Which is litigation?</p> <p>2 A. <b>It can be litigation.</b></p> <p>3 Q. How did you come to be employed at ERC?</p> <p>4 A. <b>I had met some of the people that worked for an ERC subsidiary called National Fidelity Life. They seemed like good people. It seemed like a good working environment. It gave me the chance to focus in detail on representing one client, which was an opportunity that was of interest to me. And so I went over.</b></p> <p>5 Q. What did you understand the position to be at the time you took that job?</p> <p>6 A. <b>Claims counsel.</b></p> <p>7 Q. And what were the responsibilities of a claims counsel at ERC?</p> <p>8 A. <b>Claims counsel will do a couple of things. A claims counsel would act as a consultant in terms of assisting the clients of ERC. Claims counsel would also provide legal advice if the claims counsel was an attorney, which I was, to the corporation.</b></p> <p>9 Q. What types of claims would be within your realm of responsibility?</p> <p>10 A. <b>It has varied over the years.</b></p>
<p>1 and you're mindful of what that is?</p> <p>2 A. <b>That's correct.</b></p> <p>3 Q. Can you tell the jury what the difference between ERC and ERAC is?</p> <p>4 A. <b>They are two different legal entities.</b></p> <p>5 Employers Reinsurance Corporation is a Missouri insurer. ERAC is a Kansas domiciled insurer.</p> <p>6 Q. And are they affiliated today?</p> <p>7 A. <b>They are not affiliated today.</b></p> <p>8 Q. One is a subsidiary of General Electric and the other is a subsidiary of Swiss Re?</p> <p>9 A. <b>To the best of my understanding that is correct.</b></p> <p>10 Q. And prior to a year ago, they were both subsidiaries of General Electric?</p> <p>11 A. <b>That is correct.</b></p> <p>12 Q. Before coming to ERC, how were you employed from the year you obtained your law degree to 1990?</p> <p>13 A. <b>I was employed by the Morrison and Hecker law firm from 1987 to 1990.</b></p> <p>14 Q. And that's where we are today?</p> <p>15 A. <b>A successor to that firm, yes.</b></p> <p>16 Q. Was your practice here in litigation?</p> <p>17 A. <b>My practice area was insurance defense.</b></p>	<p>1 Q. From '90 to '98 what types of claims?</p> <p>2 A. <b>From 1990 to 1993 primarily surety and fidelity. From 1993 to approximately 1999 accident and health, life, disability, long term care.</b></p> <p>3 Q. And after that?</p> <p>4 A. <b>Hospital, medical malpractice.</b></p> <p>5 Q. That's '99 through today?</p> <p>6 A. <b>No. That's '99 through approximately 2000.</b></p> <p>7 Q. And bring me forward?</p> <p>8 A. <b>From 2000 on I left the claims department, became a full-time person within the legal department. Assumed the role of general counsel for what was then the Health Care Division. And became counsel and lead lawyer for what is now the Commercial Insurance Division.</b></p> <p>9 Q. Is that the position you hold today?</p> <p>10 A. <b>Yes, it is.</b></p> <p>11 Q. Was there a period of time that you had some responsibility of some sort for a claim of Chris Kearney?</p> <p>12 A. <b>Yes, there was.</b></p> <p>13 Q. Do you recall what period of time that</p>

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1 was?  
 2 A. No, I don't.  
 3 Q. Have you reviewed any documents in  
 4 preparation for today's deposition?  
 5 A. I reviewed the one page document that I  
 6 found and produced. That's the only document  
 7 that I reviewed.  
 8 Q. That's the last document of Exhibit 2,  
 9 is that right?  
 10 A. Yes, that's correct.  
 11 Q. Did you author that document?  
 12 A. Yes, I did.  
 13 Q. What would be the purpose for you  
 14 creating this document?  
 15 A. This was information that we passed on  
 16 to Jefferson-Pilot during the course of a file  
 17 review that we had at Jefferson-Pilot. We  
 18 created this for use at Jefferson-Pilot and that  
 19 would be the primary purpose.  
 20 Q. Do you recall personally being engaged  
 21 in a file review at Jefferson-Pilot?  
 22 A. I recall going to Jefferson-Pilot.  
 23 Q. On how many occasions would you go to  
 24 Jefferson-Pilot to do file reviews?  
 25 A. I don't recall.

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1 been transferred over when I moved from laptop  
 2 to laptop.  
 3 Q. So that document there is actually a  
 4 electronic version of that document somewhere?  
 5 A. Yes, there is.  
 6 Q. Did you send that electronic version to  
 7 your attorney, Mr. Zahnd, or did you send him a  
 8 hand copy?  
 9 A. Mr. Zahnd is not my attorney. He's a  
 10 co-worker.  
 11 Q. At the time that was produced,  
 12 Mr. Zahnd wrote to me acting as your counsel,  
 13 right?  
 14 A. I don't know that that's correct.  
 15 Q. I'm not going to argue whether he's  
 16 your lawyer or not. Mr. Zahnd is the person  
 17 that sent that letter and document to me,  
 18 correct?  
 19 A. That is correct.  
 20 Q. Did he author this letter or did you  
 21 ghostwrite it?  
 22 A. I did not ghostwrite it. I assumed he  
 23 authored it.  
 24 Q. How did he come to possess the document  
 25 that he gave to me?

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1 Q. Did you go on an annual basis or more  
 2 frequently?  
 3 A. I don't recall.  
 4 Q. Or less frequently?  
 5 A. I don't recall.  
 6 Q. But you're certain this particular page  
 7 was generated as a result of your actual  
 8 physical visit to North Carolina at  
 9 Jefferson-Pilot reviewing files?  
 10 A. Yes, I am.  
 11 Q. How can you be so certain?  
 12 A. The material was located in a file of  
 13 other Jefferson-Pilot claimants and was material  
 14 that would have been produced to  
 15 Jefferson-Pilot.  
 16 Q. I'm not sure I understood you. What  
 17 material are you talking about?  
 18 A. This was part of a group of file  
 19 reviews that we did at Jefferson-Pilot.  
 20 Q. That document --  
 21 A. That's correct.  
 22 Q. -- was maintained by you in 2007 in a  
 23 file that relates back to some claims you  
 24 reviewed in 1997 at Jefferson-Pilot?  
 25 A. It was kept on my computer. It had

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1 A. I gave it to him.  
 2 Q. By hand or electronically?  
 3 A. I believe I printed it out and gave it  
 4 to him by hand.  
 5 Q. Do you still maintain the electronic  
 6 version of it?  
 7 A. Yes, I do.  
 8 Q. Do you know when it was created, the  
 9 document?  
 10 A. No, I don't.  
 11 Q. Did you go to Jefferson-Pilot in 1997  
 12 to do this review or was it earlier?  
 13 A. I don't recall.  
 14 Q. Can we conclude it's 1997 since you  
 15 asked for tax returns from '93 through '96?  
 16 A. We can conclude it's after 1996. I  
 17 honestly don't recall beyond that.  
 18 Q. If it were 1998 you would have  
 19 requested the '97 returns too, right?  
 20 A. Possibly. It would depend on the facts  
 21 of the case and I just don't remember enough to  
 22 tell you. I can conclude it was after 1996.  
 23 Q. And it would have been before sometime  
 24 in 1998 when you transferred responsibility for  
 25 the Jefferson-Pilot block of business to

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<p>1    Mr. Dempsey?</p> <p>2    <b>A. I don't recall specifically when that transfer happened. But, yes, it would have been before whenever the transfer happened.</b></p> <p>5    Q. The reserves you state in that document, is that just ERC reserves for its portion of the responsibility on the claim?</p> <p>8    <b>A. I don't remember.</b></p> <p>9    Q. Can you tell from this document what ERC's percentage of claim responsibility it was?</p> <p>11   <b>A. It appears that there were two policies, one of which was 67 percent ceded, one that was 100 percent ceded.</b></p> <p>14   Q. And ceded for the jury means what?</p> <p>15   <b>A. An insurance company can enter into a relationship with a reinsurance company whereby a portion of the risk is in effect insured by the reinsurer. The reinsurer then reimburses the cedent for that portion, whatever portion is agreed amongst the companies. Ceded is the term that's used to describe the transfer of that portion to the reinsurer.</b></p> <p>23   Q. And does your record reflect what you determined from your claim file review what the period of the benefit was, benefit duration?</p>	<p>1    DMS." Was this actually copied to DMS?</p> <p>2    <b>A. I don't recall.</b></p> <p>3    Q. It was your intention to at least copy it to DMS?</p> <p>5    <b>A. The document would certainly indicate that, but I don't have an independent recollection.</b></p> <p>8    Q. Did you leave a copy with Jefferson-Pilot?</p> <p>10   <b>A. Yes. This would have been information that was given to Jefferson-Pilot.</b></p> <p>12   Q. Are you mindful that there was a consulting agreement between DMS and ERC in the '90's?</p> <p>15   <b>A. I am aware that that existed.</b></p> <p>16   Q. Have you ever seen one?</p> <p>17   <b>A. No.</b></p> <p>18   Q. Did you ever make use of that consulting agreement?</p> <p>20   <b>A. I don't understand the question.</b></p> <p>21   Q. Did you ever direct claim files to DMS for their review pursuant to the consulting agreement in your capacity as claims counsel?</p> <p>24   <b>A. I directed files to DMS for -- as DMS assist the reinsured with looking at files.</b></p>
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<p>1    <b>A. The document indicates lifetime. I don't have independent recollection of that.</b></p> <p>3    Q. Would you have reviewed the policy to come to that conclusion, the schedules to the policy?</p> <p>6    <b>A. Typically the answer to that would be yes. I don't recall how the Jefferson-Pilot files were organized. For the duration policy it's also possible that there was a deck page in the file as opposed to the whole policy. I don't remember.</b></p> <p>12   Q. And what I will call it a To-Do List items 1 through 7, is that a list of things that you thought would be good or appropriate to do?</p> <p>15   <b>A. Well, I don't necessarily agree that it is a To-Do List. It is activities that when I reviewed the file I thought would be useful in terms of substantiating the information in the file.</b></p> <p>20   Q. I call it a To-Do List. I was only referring to 10ths. It's things that hadn't been done, but you were recommending to be done in the future, right?</p> <p>24   <b>A. I don't recall.</b></p> <p>25   Q. Okay. At the bottom it says "Copy to</p>	<p>1    <b>Whether it was pursuant to that consulting agreement, I don't know.</b></p> <p>3    Q. Was that something you did hundreds of times, dozens of times, couple times, rarely?</p> <p>5    <b>A. I couldn't recall the specific number of times.</b></p> <p>7    Q. Was it in the hundreds?</p> <p>8    <b>A. I don't recall. That -- it seems like hundreds would be a high number.</b></p> <p>10   Q. Did you direct that JP send the Kearney file to DMS for its review?</p> <p>12   <b>A. I don't recall. I would not have -- it would be unlikely that I would have directed them to do that.</b></p> <p>15   Q. Did you recommend?</p> <p>16   <b>A. I don't recall.</b></p> <p>17   Q. Have you reviewed any other documents other than what I have shown you as attached to Exhibit 2?</p> <p>20   <b>A. No, I have not.</b></p> <p>21   Q. Did you meet with Mr. Meagher and Mr. Baty for several hours in preparation for the deposition?</p> <p>24   <b>A. No.</b></p> <p>25   Q. Did you meet with Mr. Meagher at all</p>

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1 prior to the deposition today?  
 2     A. **Yes, I did.**  
 3     Q. Was that yesterday or just today?  
 4     A. **It was today.**  
 5     Q. Have you seen a privilege log that was  
 6 produced in this lawsuit?  
 7     A. **No, I have not.**  
 8     Q. -- from ERC? Sir, we've marked as  
 9 Exhibit 1 in Mr. Dempsey's deposition a  
 10 privilege log that was provided to me. And I  
 11 would ask that you -- have you seen one of these  
 12 before? Far left hand column is a sequence of  
 13 numbers listed numerically.  
 14     A. **Okay.**  
 15     Q. If you could turn to the page that  
 16 contains the reference to page 1466.  
 17     A. **Okay.**  
 18     Q. Do you have an understanding of what  
 19 "work product" means?  
 20     A. **Yes, I do.**  
 21     Q. Can you tell the jury what it means?  
 22     A. **Work product is a form of**  
 23 **attorney/client privilege where activities are**  
 24 **undertaken at the request of an attorney.**  
 25     Q. In anticipation of litigation?

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1     A. **In reasonable anticipation of potential**  
 2 **litigation.**  
 3     Q. Document 1466, can you tell the jury  
 4 what the date is associated with that document?  
 5     A. **The privilege log indicates 11-14,**  
 6 **1996. I have -- I don't recall this document.**  
 7     Q. But it indicates that you authored some  
 8 document to a Mr. Roberson, right?  
 9     A. **That's what the privilege log**  
 10 **indicates, correct.**  
 11     Q. You do know that Mr. Roberson was an  
 12 individual in the claims area of  
 13 Jefferson-Pilot?  
 14     A. **I don't recall the name Roberson.**  
 15     Q. And this suggest that on that date you  
 16 issued some sort of a recommendation that was in  
 17 anticipation of litigation on the Kearney claim,  
 18 right?  
 19     MR. MEAGHER: Objection to form.  
 20     A. **It was in -- well, I don't recall.**  
 21     Q. (By Mr. Roberts) I'm not asking if you  
 22 recall. I'm just saying this entry here on this  
 23 privilege log suggest that in November of '96  
 24 you sent a memorandum to Roberson that was a  
 25 recommendation on the Kearney claim in

6 (Pages 18 to 21)

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1 anticipation of litigation, correct?  
 2     MR. MEAGHER: Objection to form.  
 3 You can answer.  
 4     A. **I can see in the summary that it**  
 5 **indicates memorandum and in the subject**  
 6 **recommendation. I don't recall beyond that.**  
 7     Q. (By Mr. Roberts) And it suggest that  
 8 the document is protected from disclosure under  
 9 the work product doctrine, right?  
 10     MR. MEAGHER: Objection to form.  
 11     A. **It is in the privilege log.**  
 12     Q. (By Mr. Roberts) Do you recall  
 13 anticipating litigation against Mr. Kearney in  
 14 1996?  
 15     A. **No. I don't recall -- I don't recall**  
 16 **anything about this claim to be perfectly**  
 17 **honest.**  
 18     Q. Can you turn to the entry for  
 19 Document 316?  
 20     A. **Okay.**  
 21     Q. That suggest in May of '98 you had some  
 22 attorney/client and work product communications  
 23 regarding claim handling with a lawyer named  
 24 Bill Ellis, right?  
 25     A. **The log indicates that there was**

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1 **correspondence dated 5-5, 1998 from myself to**  
 2 **Mr. Ellis.**  
 3     Q. Actually the reverse from Mr. Ellis to  
 4 you?  
 5     A. **I'm sorry, excuse me.**  
 6     Q. Do you have any reason to believe  
 7 that's not accurate?  
 8     A. **I don't recall this document.**  
 9     Q. Do you recall any interaction with Mr.  
 10 Ellis?  
 11     A. **I know that we have used Mr. Ellis on a**  
 12 **couple of cases on varies subjects. I don't**  
 13 **recall this interaction.**  
 14     Q. When would have been the last time  
 15 prior to 2007 -- 2007 you received a subpoena.  
 16 So prior to 2007, when would have been the last  
 17 time you had any interaction of any nature with  
 18 regard to Chris Kearney or his claim?  
 19     A. **I don't recall. It would surprise me**  
 20 **if it was after 1998.**  
 21     Q. Do you recall with what frequency  
 22 receiving documents regarding the Kearney claim  
 23 from Jefferson-Pilot?  
 24     A. **No, I don't.**  
 25     Q. In the 1997 timeframe you don't know

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<p>1 how many claims you had facilitated DMS  2 reviewing?</p> <p>3     <b>A. I don't recall.</b></p> <p>4     Q. You don't know if it's less than a  5 handful or more than hundred?</p> <p>6     <b>A. The number hundred strikes me as high.</b></p> <p>7     <b>Other than that I don't recall.</b></p> <p>8     Q. Could it have been just a handful?</p> <p>9     <b>A. Probably was more than a handful.</b></p> <p>10    Q. What directed you to make the decision  11 to send a claim file to DMS for review?</p> <p>12    <b>A. Could be a variety of factors. It  13 could relate to the staffing at the company that  14 we were doing a claim audit at or had a  15 relationship with. It could be indications in  16 the file that there were -- that there was a  17 need for further investigation that the primary  18 company had not done. Could be a number of  19 things.</b></p> <p>20    Q. Jefferson-Pilot had its own claim  21 department in '97/98, right?</p> <p>22    <b>A. I recall them having their own claim  23 department when I visited them. I can't be  24 specific as to the '97 or '98 timeframe.</b></p> <p>25    Q. We have marked as Exhibit 9 a July 8,</p>	<p>1     <b>Kearney, so I don't know.</b></p> <p>2     Q. You didn't stumble across a similar  3 form for Mr. Kahn or Mr. London?</p> <p>4     <b>A. Again, I searched only for Mr. Kearney.</b></p> <p>5     Q. You did an electronic search?</p> <p>6     <b>A. Yes.</b></p> <p>7     Q. You did the word "Kearney" and the only  8 hit was that particular document?</p> <p>9     <b>A. That's correct.</b></p> <p>10    Q. And it was stored in a electronic file  11 that relates back to your 1997 visit to North  12 Carolina?</p> <p>13    <b>A. It relates back to a visit to North  14 Carolina. I don't know the timeframe.</b></p> <p>15    Q. Sitting here, do you recall whether you  16 facilitated, recommended that these three claim  17 files go to DMS for its review?</p> <p>18    <b>A. No, I don't.</b></p> <p>19    Q. When you would go review a claim file  20 at Jefferson-Pilot, tell me what would happen  21 physically?</p> <p>22    <b>A. We would arrange with Jefferson-Pilot  23 for dates that would be convenient for us to be  24 at Jefferson-Pilot. We would produce a listing  25 of files that we wanted to review. We would</b></p>
<p style="text-align: center;">Page 23</p>	<p style="text-align: center;">Page 25</p>
<p>1 '97 letter, Bates 502 from Shelton to DMS that  2 refers to DMS for its review three files. Do  3 you see that?</p> <p>4     <b>A. Yes.</b></p> <p>5     Q. When you were in the process of  6 reviewing, collecting documents pursuant to the  7 subpoena you received, you came cross this  8 document on Kearney, right?</p> <p>9     <b>A. Yes.</b></p> <p>10    Q. And in that same file did you come  11 across similar documents for Mr. Kahn and  12 Mr. London?</p> <p>13    <b>MR. MEAGHER: I'm going to  14 object. Again, I believe that information on  15 the identity of other claimants should be  16 redacted. I made that clear in Mr. Dempsey's  17 deposition. You now have read their names into  18 the record in direct contradiction to my  19 position on that. So I think that should be  20 redacted from the transcript also and this  21 record redacted.</b></p> <p>22    Q. (By Mr. Roberts) Sir, this is already  23 a public record. It's attached to several  24 pleadings in litigation.</p> <p>25    <b>A. I searched only for Christopher</b></p>	<p>1 send that to Jefferson-Pilot. We would travel  2 to Jefferson-Pilot. Jefferson-Pilot would  3 produce the files and we would review them.</p> <p>4     Q. The files in total?</p> <p>5     <b>A. I can't say that every file we  6 requested was produced. Some would be in the  7 process of payment or in use such that they were  8 not available at the times that we were there.</b></p> <p>9     Q. But you did review Mr. Kearney's claim  10 because -- claim file because you created that  11 document?</p> <p>12    <b>A. Yes. And I don't have a recollection  13 of doing that. The document certainly indicates  14 that I did.</b></p> <p>15    Q. You've spoken the first person plural  16 about these visits to North Carolina. Did other  17 people accompany you?</p> <p>18    <b>A. Mr. Dempsey accompanied me on at least  19 one visit. And I believe Bob Lainer  20 accompanied me on one visit as well.</b></p> <p>21    Q. And you would just split up the work  22 loads when you got there?</p> <p>23    <b>A. We would look at -- we would look at  24 different files, yes.</b></p> <p>25    Q. Sir, I apologize for making you wait.</p>

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1 We are concluded.  
 2 MR. MEAGHER: No questions.  
 3 MR. MARTIN: It is now 4:02. We  
 4 are going off the record.  
 5 MR. MEAGHER: Just on the record,  
 6 Mr. Roberts just told me, and I understand that  
 7 it came up one day I guess at the deposition  
 8 that Bill Ellis attended, that Mr. Kearney  
 9 suffered a heart attack. I'm just asking  
 10 whether are we still on as far as you know as  
 11 you sit here today, are we still on for his  
 12 deposition on June 20 of next week?  
 13 MR. ROBERTS: On the record, yes.  
 14 (Deposition concluded at 4:05 PM.)

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1 C E R T I F I C A T E  
 2 I, Mary Lynn Cushing, a Certified  
 3 Shorthand Reporter for the State of Missouri, do  
 4 hereby certify:  
 5 That prior to being examined the  
 6 witness was by me duly sworn;  
 7 That said deposition was taken down by  
 8 me in shorthand at the time and place  
 9 hereinbefore stated and was thereafter reduced  
 10 to writing under my direction;  
 11 That I am not a relative or employee or  
 12 attorney or counsel of any of the parties, or a  
 13 relative or employee of such attorney or  
 14 counsel, or financially interested in the  
 15 action.  
 16 WITNESS my hand and seal this \_\_\_\_\_  
 17 day of \_\_\_\_\_, 2007.  
 18  
 19 \_\_\_\_\_  
 20 MARY LYNN CUSHING, CSR, CCR No. 1077  
 21 FEES DUE METROPOLITAN COURT REPORTERS, INC. :  
 22 \$ \_\_\_\_\_ ATTORNEY FOR PLAINTIFF  
 23 \$ \_\_\_\_\_ ATTORNEY FOR DEFENDANT

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1  
 2  
 3  
 4  
 5  
 6  
 7 DAVID NEWKIRK  
 8  
 9  
 10  
 11 Subscribed and Sworn to before  
 12 me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
 13  
 14  
 15  
 16 Notary Public  
 17  
 18 County of \_\_\_\_\_  
 19 State of \_\_\_\_\_  
 20  
 21  
 22  
 23 JEFFERSON PILOT vs. CHRISTOPHER KEARNEY  
 24  
 25

1 June 28, 2007  
 2  
 3 Mr. David Newkirk  
 4 c/o Mr. Bruce E. Baty  
 5 Stinson, Morrison, Hecker, LLP  
 6 1201 Walnut Street, Suite 2900  
 7 Kansas City, Missouri, 64106  
 8 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY  
 9 Dear Mr. Newkirk:  
 10 Enclosed is your deposition, given in the  
 11 above-named matter, for your examination and  
 12 signing. You will also find a signature page  
 13 and an errata sheet for your convenience in  
 14 making any changes or corrections.  
 15 Pursuant to the law, any change in "form or  
 16 substance" of an answer shall be accompanied  
 17 with a statement of the reason given by you for  
 18 making such change.  
 19 Upon completion of your examination and reading,  
 20 please sign the enclosed signature page and  
 21 errata sheet and return them to this office in  
 22 the enclosed self-addressed envelope. If we  
 23 have not received the signed documents from you  
 24 within 30 days from the date of this letter, an  
 25 unsigned copy of your deposition will be filed.  
 26  
 27 Yours very truly,  
 28  
 29 METROPOLITAN COURT REPORTERS, INC.  
 30  
 31 By: MARY LYNN CUSHING, CSR, CCR No. 1077

1 ERRATA SHEET  
2 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY  
3 DEPOSITION OF: DAVID NEWKIRK  
4 PG/LN NO. CORRECTION REASON FOR CHANGE

5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
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15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_

18 \_\_\_\_\_ I certify that I have read my deposition  
in the above case and I request that no changes  
be made.

19 \_\_\_\_\_ I certify that I have read my deposition  
in the above case and I request that the above  
changes be made.

20 SIGNATURE OF DEPONENT:  
21 \_\_\_\_\_

22 DATED: \_\_\_\_\_  
23  
24  
25



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